

**EXHIBIT 2**

**Picard v. Merkin**

**J. Ezra Merkin 2-24-15**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Debtor.

Adv. Pro. No.

08-01789 (BRL)

IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,

Plaintiff, Adv. Pro. No.

09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,  
L.P., ARIEL FUND LTD., ASCOT  
PARTNERS, L.P., GABRIEL CAPITAL  
CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION OF J. EZRA MERKIN,  
as reported by Nancy C. Bendish, Certified Court  
Reporter, RMR, CRR, and Notary Public of the  
State of New York, at the offices of Baker  
Hostetler, 45 Rockefeller Plaza, New York, New  
York, on Tuesday, February 24, 2015, commencing  
at 9:47 a.m.

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1 Q. Do you know when he invested with  
2 Mr. Madoff?

3 A. I don't know. I don't know. It  
4 may have been a number of years prior to this.  
5 If this is the late '80s, this might have been  
6 either directly or perhaps with friends, and I'm  
7 just not sure, he may have been an investor as  
8 much as a decade earlier or sometime in between  
9 and it may have been not under his name. So,  
10 that is he may have been an investor in an  
11 entity that was an investor of Mr. Madoff's. My  
12 first investment with Mr. Madoff was through  
13 something called 61M Associates, something like  
14 that.

15 Q. Did you ever discuss with your  
16 father his investment experience with  
17 Mr. Madoff?

18 A. My father was not a person of many  
19 words and my father was very sparing in praise  
20 and had a very constructive opinion of  
21 Mr. Madoff and his investing abilities.

22 Q. That sounds, pardon me, like a  
23 conclusion. What I'm asking is whether or not  
24 you ever discussed the actual investment  
25 experience that your dad had with Mr. Madoff.

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1 A. So when I said he was a person of  
2 spare praise and few words, he spoke in  
3 conclusions. So he would say I knew Bernie, I  
4 know Bernie and Bernie's okay, or I know Bernie  
5 and he's okay. That's what I mean. You  
6 consider that is a conclusion, perhaps, but  
7 that's what he said.

8 Q. Is that the extent of the  
9 conversation you and he had?

10 A. At that particular time, that is  
11 certainly the extent that I remember. This is  
12 going back a while.

13 Q. I understand.

14 A. I don't remember -- I don't  
15 remember specifics about what was bought or sold  
16 or owned for that investment process.

17 Q. Okay. Did there come a time after  
18 that when you had any, any discussions with your  
19 father about investing with Bernie Madoff?

20 A. Well, my father died in 1999 and  
21 so let's just say roughly ten years later, then  
22 this period of time, so maybe '11, I don't know,  
23 the late '80s versus the late '90s -- no, I do  
24 know when my father passed away but I'm  
25 saying -- so my father was 92 -- was not quite

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1 92 when he died, and I didn't have that many  
2 further discussions that I remember with him on  
3 that subject.

4 Q. Okay. Let's go back to your  
5 meeting, if I may, with Mr. Madoff.

6 So, how was it that you came to  
7 meet with him in the first place?

8 A. I don't remember the circumstances  
9 of the first meeting and I don't remember when  
10 the first meeting was, exactly, and I have a  
11 vague memory that I met Bernie downtown, meaning  
12 he -- it may have been before he moved his  
13 office uptown and I don't know when he moved his  
14 office uptown. I have a vague memory that I met  
15 him still when he was on Wall Street. I mean  
16 that literally, that he had an office on a  
17 street called Wall Street. I don't mean the  
18 financial district.

19 Q. I understand.

20 A. It's in the financial district but  
21 if there was there was one. This was the  
22 beginning of our due diligence process and the  
23 discussions that I remember more clearly are  
24 already uptown at Third Avenue in the east 50s.

25 Q. What were you doing at that time?

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1 can be very, very, very additive.

2 Q. You indicated -- I'm sorry, I'm  
3 moving around. I'm going to page 5 of this  
4 document, 354. Down in the last paragraph.

5 A. Just one second.

6 Q. Sure, take your time.

7 A. Just trying to get there. Sorry.

8 Q. It's a paragraph that starts,  
9 "Mr. Merkin also knew." And if you travel on  
10 down, you start -- you discuss the SEC. I want  
11 to be sure I don't miss something here. Sorry,  
12 I might have jumped over something.

13 A. It's okay.

14 Q. Boy, your memory place tricks  
15 here.

16 A. Would you say that for the record,  
17 please.

18 Q. I would readily admit it to the  
19 jury. Just ask Brian Williams.

20 Let's go back to page 5 and the  
21 SEC.

22 A. Last paragraph?

23 Q. Yeah, last paragraph. I'm going  
24 to just read it. "In one of their many  
25 conversations, Mr. Madoff reported that the SEC

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1 had visited BLMIS's offices to conduct reviews  
2 eight times in 16 years, and that gave you  
3 additional comfort about Mr. Madoff's bona  
4 fides." Do you see that?

5 A. I do.

6 MR. STEINER: It wasn't exactly a  
7 correct reading, but close enough.

8 MR. SHEEHAN: All right. I stand  
9 by the record, not by what I said, all right?  
10 Just suggesting a question.

11 Q. But can you tell me what you  
12 discussed that gave you comfort?

13 A. Unless I'm missing, it says -- the  
14 specific reference to the SEC reviews?

15 Q. Yes. Did he tell you what they  
16 did?

17 A. Oh. I thought you were saying  
18 something about the comfort.

19 Q. No.

20 A. He had either scheduled or  
21 surprise visits from the SEC with some  
22 regularity and some frequency, perhaps more on  
23 the regular than on the surprises. He was very  
24 proud of his overall compliance record and just  
25 sort of a clean bill of health with occasional

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1 references to one or two smaller things, and it  
2 certainly meant a great deal to me that the SEC,  
3 with the power of subpoena, with the ability to  
4 spend days at the firm, which is how he  
5 presented it, came away and said, you know,  
6 thank God for Bernie. And that was very  
7 significant to me.

8 Q. My question, though, was, maybe I  
9 wasn't clear so I'll restate it.

10 Did he tell you what exactly the  
11 SEC did during these visits?

12 A. Yeah. He -- his operation was  
13 reviewed by the SEC. It is my memory on the --  
14 on what I thought of as the two sort of aspects  
15 of the business.

16 Q. What I'm asking you for is  
17 specifically, for example, did he tell you that  
18 they asked for access to DTCC to verify the fact  
19 that he had the stock he said he had?

20 A. I don't remember that  
21 conversation.

22 Q. Did he ever represent to you that  
23 that happened?

24 A. I truly don't remember.

25 Q. Okay. Page 6 if you would,

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1 bump into him then a couple times a year for  
2 that. And there was always or almost always an  
3 opportunity to ask him something that I wasn't  
4 sure about in terms of where the strategy --  
5 whether it had been executed properly or where  
6 the strategy might be headed to next.

7 Madoff's continued and growing  
8 success and prominence in the securities  
9 industry was very significant. He did end up in  
10 the position he achieved at NASDAQ, as its  
11 chairman, and he went to Washington for hearings  
12 for testimony.

13 I remember an occasion when he and  
14 the president of the stock exchange and a former  
15 chairman of the SEC were basically the three  
16 persons who congressional committees wanted to  
17 speak to. That all goes to various and  
18 different forms of due diligence.

19 Continued to talk to investors,  
20 continued to talk to investors of his not  
21 through us, who I thought were thoughtful and  
22 insightful investors, bringing investors to see  
23 him was a big part of what we were after.

24 Various events that took place in  
25 the securities industry mattered to me a great

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1 deal. Not at the very beginning but closer to  
2 then than the end the way an accounting firm  
3 called Avellino & Bienes' pool was unwound by  
4 the SEC's regional administrator in New York,  
5 all the assets, or very substantially all the  
6 assets to be managed at Madoff and with the very  
7 clear reassurance from the SEC that every penny  
8 was properly accounted for, was a very important  
9 piece of information.

10 It meant that the SEC, which had  
11 every reason to look especially careful,  
12 especially carefully at a fund that had been put  
13 together that had clear legal issues, forcing  
14 the liquefaction of the fund and putting the  
15 fund out of business was basically saying we  
16 found the fund to be managed by Madoff and we  
17 were very, very happy to tell you that  
18 everything is there.

19 There was a quote from Richard  
20 Walker who was then the regional administrator  
21 in an article in the Wall Street Journal, and it  
22 was very important. The development of  
23 something called Primex, which was a trading  
24 platform, that was to be managed by Madoff.

25 Madoff didn't really look for